

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**RESOLUTION 99-054**

AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO SUE FOR PROPOSED 6.6-ACRE SITE TO BE PURCHASED BY AMERICAN STORES (PROPOSED LUCKY STORE NO. 110-398) IN HAYWARD, ALAMEDA COUNTY

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (the Board) finds that:

1. **Jurisdiction:** The proposed 6.6-acre site is located in Hayward, Alameda County, bounded by A Street to the north, Mission Boulevard to the east, residential property to the west, and B Street and commercial property to the south. Site details are shown in exhibit 3. The Board is the lead agency because of the concerns related to groundwater quality at this site.
2. **Site Status:** The chemicals of concern at the site are volatile organic compounds, primarily tetrachloroethylene (PCE) and trichloroethylene (TCE). These VOCs appear to have come from an on-site dry cleaning facility. The Board has required subsurface investigations to define the extent of the soil and groundwater contamination, which forms the basis for the proposed remediation activities. No orders have been issued from the Board with regard to any of the dischargers on this site to date.
3. **Subsurface Investigations:** ASPI and the City of Hayward have performed numerous subsurface investigations at the site. These investigations have shown that contamination from past discharges is found in the shallow soils and groundwater beneath the site. Additional borings and wells have shown that a regional aquitard, the Yerba Buena Mud, is present at the site. This aquitard prevents the shallow groundwater contamination from reaching the deeper water-producing aquifer present below the Yerba Buena Mud. A search of State and County records was performed to locate any wells that could act as conduits for vertical migration of the shallow water contamination to the deeper aquifer. One nearby well was identified as a possible conduit. However, subsequent investigation of this well shows that it is only 130 feet deep and terminates at the top of the regional aquitard. Based on the borings and wells drilled in the site vicinity, as well as information from the East Bay Plain Study which documents the regional aquitard, the deeper water-producing aquifer is adequately protected from the shallow groundwater contamination at the site.
4. **Future Activities:** Future activities will include the completion of a site specific Risk Assessment and additional site investigation (soil vapor and groundwater sampling).

Future remediation is expected to focus on additional source removal (removal of contaminated soils on-site). Removal of the source materials will enhance the natural attenuation of the VOCs at the site. ASPI has agreed to accept responsibility for site investigation and remediation as detailed in the Work Plan dated 06/08/99 attached as Exhibit A to the Mutual Release and Covenant Not to Sue.

5. **Deed Restriction:** As a condition of the Mutual Release, ASPI has agreed that a deed restriction limiting wells or extraction of ground water within the site and, if necessary, use of the site, will be executed and recorded as detailed in the Work Plan dated 06/08/99 attached as Exhibit A to the Mutual Release and Covenant Not to Sue. Adherence to such deed restriction is a condition for the continued benefits conferred by the Covenant Not to Sue.
6. **Proposed Redevelopment:** ASPI, or one of its affiliates, proposes to purchase the 6.6-acre site in order to build a Lucky Store and certain related and attached retail operations on the site. Completion of the purchase is contingent upon the Board's agreement to enter into a Mutual Release and Covenant Not to Sue as attached hereto. The site will substantially improve the property and is strongly supported by the City of Hayward. Substantial public benefits to the City of Hayward, the adjacent neighborhoods, and the environment (by virtue of the obligation to perform all tasks identified in the Work Plan attached to the Mutual Release and Covenant Not to Sue) outweigh any risk to the public in entering into the agreement.
7. **ASPI's Request:** ASPI seeks a commitment from the Board that ASPI and its successors in interest will not be named as dischargers (or responsible parties) in a Board enforcement order solely by virtue of being the current property owner or otherwise be held responsible for site remediation. Specifically, ASPI requests that the Board issue a release and covenant not to sue ASPI, subsequent purchasers, and related parties for the Parcel relative to known conditions. Lacking this assurance from the Board, ASPI will not be able or willing to complete the purchase.
8. **Board Authority:** Pursuant to the Board's statutory authority, the Board can enter into agreements whereby the Board covenants not to name prospective purchasers, tenants, or lenders in enforcement actions for remediation of polluted properties if such agreements are sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.
9. **Benefits of Redevelopment:** In addition to the construction of aesthetically pleasing stores that will serve neighborhood requirements, benefits to the community include the future employment of more than 150 people (at the Lucky Store alone), as well as the development of 20,000 square feet of additional retail space that will create employment for others. In addition it is calculated that the incremental annual sales tax revenue accruing to the local municipality will approximate \$110,000 from the Lucky Store alone, with additional incremental sales tax from other retail operations in anticipated annual real estate tax increases that have not yet been calculated. Additional environmental

assessment, soil remediation, and groundwater monitoring, as set forth in the Work Plan, is also to be provided. The additional environmental work is required because the contamination threatens to adversely affect the beneficial uses of groundwater. These beneficial uses include municipal and domestic supply, agricultural supply, industrial service and process water supply.

10. **Guidance and Past Actions:** On July 9, 1996, the State Water Resources Control Board (State Board) Executive Director issued guidance regarding brownfields for regional board consideration in evaluating requests for release of liability. The memo addresses agreements between regional boards and owners or prospective purchasers of polluted property, including covenants not to sue. The Board has, in the past, entered into agreements containing mutual covenants with ASPI with two Bay Area sites, and this agreement is consistent with the July 9 memo and past actions of this Board.
11. **CEQA:** The purchase of the parcel is not an activity that requires the Board's approval and, therefore, does not constitute a "project" as defined by Public Resources Code Section 21065 and 14 CRR 15378(a). Thus, the activity is exempt from CEQA.
12. **Public Notice:** The Board provided notice of its intention to consider this matter at the July 21, 1999 Board meeting and provided an opportunity for interested persons to comment on the draft resolution and its attachments.
13. **Public Hearing:** The Board, in a public meeting, heard and considered all comments pertaining to this matter.

**NOW, THEREFORE BE IT RESOLVED,** that the Board authorizes the Executive Officer to sign the Mutual Release and Covenant Not to Sue (Exhibit 1).

Exhibit 1: Mutual Release and Covenant Not to Sue

Exhibit 2: Transfer Document

Exhibit 3: Map of Proposed Parcel

I, Loretta K. Barsamian, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 21, 1999.



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Loretta K. Barsamian  
Executive Officer

**EXHIBIT 1**

**MUTUAL RELEASE AND  
COVENANT NOT TO SUE**

California Regional Water Quality Control Board  
San Francisco Bay Region

**EXHIBIT 1 TO TENTATIVE RESOLUTION**

**MUTUAL RELEASE AND COVENANT NOT TO SUE  
FOR PROPOSED LUCKY STORE NO. 110-398, HAYWARD, CALIFORNIA**

**I. INTRODUCTION**

THIS MUTUAL RELEASE AND COVENANT NOT TO SUE (the "Mutual Release") is provided in response to a request by American Stores Properties, Inc. ("ASPI") and pursuant to San Francisco Bay Regional Water Quality Control Board ("Regional Board") Resolution No. 99-054 ("Resolution") authorizing its Executive Officer to negotiate and sign the Mutual Release concerning the proposed Lucky store no. 110-398, which consists of approximately 6.6 acres located in Hayward, California and bounded by A Street to the north, Mission Boulevard to the east, residential property to the west, and B Street and commercial property to the south [which is more particularly described in Attachment 3 to the Resolution (the "Property")] which ASPI will develop for commercial retail uses. This Mutual Release is consistent with the State Water Resources Control Board ("State Board") Executive Director's memorandum dated July 9, 1996 regarding prospective purchaser agreements.

The Regional Board understands that ASPI desires to purchase this Property, which ASPI will develop for commercial retail uses. ASPI desires a commitment, to the maximum extent permitted by law, that it, subsequent purchasers, tenants, lenders, and any occupants of the Property, as well as all of their respective directors, officers, shareholders, employees, partners, "ASPI Affiliates", members, agents, successors, and assigns (individually a "Released Party" and collectively the "Released Parties") and their respective successors in interest will not be subject to liability for, or the subject of any actions, claims, orders, demands, enforcement actions or other civil or administrative proceedings, including without limitation, any investigation, monitoring or remediation requirements, related to or arising from the Known Conditions as of the date this Mutual Release is fully executed ("Effective Date"). "ASPI Affiliates" are any entities controlling, controlled by, or under common control with the purchaser, ASPI.

**II. DEFINITIONS**

For purposes of this Mutual Release, "Known Conditions" means all conditions of pollution at, under, or originating from the Property or any portion thereof, that were known to the Regional Board prior to the Effective Date. The phrase "known to the Regional Board" refers to information regarding hazardous substances, including the volatile organic compounds (VOCs), petroleum fuel releases, and other pollution at, under, or originating from the Property, or any portion thereof, that was disclosed to the

Regional Board or is reasonably discernible from the reports listed in the Resolution, or the investigations, workplans, reports, or any other information submitted to the Regional Board prior to the Effective Date. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Regional Board, the Released Parties shall bear the burden of proving that any condition of pollution at, under, or originating from the Property is a Known Condition.

### **III. FINDINGS OF FACT**

1. The Property is within the jurisdiction of the Regional Board due to the Known Conditions. The Regional Board enters into this Mutual Release pursuant to California Water Code Sections 13300, et seq. The Regional Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against prospective purchasers of environmentally impacted properties, where, as here, the agreement is sufficiently in the public interest.
2. The current owners of the Property comprise multiple individuals and corporate entities, including a substantial amount of property which has been acquired by the Redevelopment Agency for the City of Hayward. The known or potential dischargers within the property include a former dry cleaner located at 22525 Watkins Street, a possible former service station located on the southwestern corner of the intersection of A and Watkins at 789 A Street, former and current auto repair shops in several areas of the property, as well as other activities as noted in the LFR report dated January 28, 1999, including the former Yellow Taxi Cab Company operation, an operating Greyhound bus station, and an operating auto repair shop in the southwestern portion of the site.
3. Various investigative activities have been undertaken on the Property, but no remediation has been undertaken to date, and additional assessment and soil remediation is deemed advisable by the Regional Board. A table of groundwater quality data and a site plan showing sample locations are attached as exhibit B.
4. ASPI is not a responsible party or affiliated with a responsible party for the Known Conditions, and the sole interest of ASPI in the property is to purchase the Property to facilitate its development for commercial retail uses.
5. ASPI plans to develop the Property to a productive use which will benefit the public and the community. Benefits include additional environmental assessment and soil remediation, as required, and, future employment of more than 150 persons (at the Lucky store alone), as well as development of 20,000 square feet of additional retail space that will create employment

for others. In addition, it is calculated that the incremental annual sales tax revenue accruing to the local municipality will approximate \$110,000 from the Lucky store alone, with additional incremental sales tax from other retail operations and anticipated annual real estate taxes increases that have not yet been calculated.

6. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Act and the federal Clean Water Act.
7. Future uses of this site will address current Known Conditions and expected future retail sales activities will avoid uses which could have adverse environmental consequences. No activities at the Property, with the exercise of due care, will aggravate, contribute to, or create a condition of, pollution as a result of the Known Conditions; and any activities conducted by ASPI or its tenants, successors, or assigns at the Property will be in compliance with the requirements of law.

#### **IV. AGREEMENT**

In consideration of ASPI's agreement to complete all tasks identified in the Work Plan (attached as Exhibit A) and in accordance with the Resolution, and the findings of the Regional Board staff, the Regional Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against the Released Parties arising out of or related to such Known Conditions under any local, state or federal statute or the common law, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property, and shall benefit any respective successors and assignees of the Released Parties, unless such successors and assignees caused or contributed to the Known Conditions.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, Liability and Recovery Act of 1980, 42 U.S.C. Section 9613(f)(2) ("CERCLA") provides that: "A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement." Accordingly, the Regional Board affirms that this Mutual Release and Covenant Not to Sue resolves the Released Parties' liability to the Regional Board with regard to any claims related to the matters included in the Resolution, including all claims regarding the handling, storage, presence,

migration, cleanup, or disposal of the Known Conditions at, under, or originating from the Property.

This Release shall remain effective notwithstanding the revocation or modification of Resolution No. 99-054, and shall be without prejudice to the ability of the Regional Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions.

Notwithstanding any other provisions of this Mutual Release, the Regional Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceedings against the respective Released Parties relating to the acts or omissions of the Released Parties arising after the Effective Date and which are based on the failure of the respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with respect to the Known Conditions, (ii) comply with the requirements and conditions of this Mutual Release, (iii) comply with any deed restrictions and/or institutional constraints currently imposed or that the Regional Board may subsequently impose (with regard to limitations upon the extraction of groundwater at the Property), and (iv) cooperate in providing reasonable access to the Property for monitoring purposes and construction, maintenance, and repair of any necessary remediation and/or monitoring system implemented or required by the Regional Board. If the Regional Board determines that a Released Party has failed to comply with any of these four enumerated requirements, and the Regional Board elects to proceed against that Released Party, then this Mutual Release shall be null and void as to that Released Party, and the Regional Board and the Released Party shall then have any rights or defenses they would have had if this Mutual Release and Covenant Not to Sue had not existed.

This reservation by the Regional Board shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Regional Board's covenant inapplicable to any other Released Party. Nothing contained in this Mutual Release shall be deemed a waiver of, or a release by, any Released Party of any defense, cross-claim, counter claim, offset or other rights available to such Released Party in response to any claim, order, demand, enforcement action or other civil or administrative proceeding by the Regional Board, as specifically reserved hereunder.

In partial consideration for this Mutual Release, the Released Parties, on behalf of themselves and their respective successors in interest, (1) hereby release and covenant not to sue the Regional Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions, and (2) agree to sign and record a deed restriction, pursuant to Civil Code section 1471, prohibiting or restricting use of groundwater at the Property and, if necessary, the use of the Site, at the time ASPI acquires the Property, as stated in the Work Plan (attached as exhibit A).



The Mutual Release shall not prohibit the Regional Board from asserting any claim, enforcement action or other civil or administrative proceeding related to any condition of pollution at, under or originating from the Property prior to the Effective Date that are not related to Known Conditions. Each Released Party not represented as a signatory below shall, as a precondition to receiving the benefits conferred by this Mutual Release, execute a written instrument in a form approved by the Regional Board. Execution of this Mutual Release or of any related, approved releases by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all directors, officers, employees, partners, affiliates, members, agents, successors, and assigns of such entity.

ASPI shall record this Mutual Release in the County of Alameda within thirty (30) days of ASPI's acquisition of the Property. A copy of the recording shall be provided to the Board within ten (10) days of the recording.

This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.

Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein, and that the foregoing is a full, true and correct copy of Exhibit 1 to Resolution No. 99- 054, Mutual Release and Covenant Not to Sue adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 21, 1999.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

By: \_\_\_\_\_  
Loretta K. Barsamian, Executive Officer

Date: \_\_\_\_\_

AMERICAN STORES PROPERTIES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**PROPOSED SCOPE OF WORK**

## **EXHIBIT A**

### **PROPOSED SCOPE OF WORK TO ADDRESS ENVIRONMENTAL CONCERNS, PROPOSED LUCKY STORE NUMBER 110-398**

American Stores Properties, Inc. (ASPI) is interested in redeveloping the Site in accordance with the Working Site Plan prepared by Flynn, Craig & Wood included as Figure 1. As shown in Figure 1, the Lucky Store will be built west of Watkins Street, the area where the highest concentrations of volatile organic compounds (VOCs) have been detected in groundwater and in the likely source area for these compounds (i.e., the vicinity of the former Dry Cleaners; Area 1 on Figure 2). Additionally, groundwater sampling conducted to date by ASPI has indicated the presence of VOCs in shallow groundwater. Additional plume delineation and monitoring will be undertaken in conjunction with project development.

ASPI is proposing to conduct the following scope of work as further described on the following pages to address environmental concerns at the Site:

1. Evaluate if there are existing wells near the Site that may provide a conduit for VOCs in shallow groundwater to migrate deeper.
2. Further investigate and characterize source area soils in three areas of the Site identified as potential source areas (i.e., in the vicinity of Areas 1, 8, and 10 shown on Figure 2).
3. Develop risk-based cleanup goals for unsaturated soils at the Site that are protective of human health and the environment.
4. Prepare a soil management plan (SMP) for the handling and management of VOC-affected soil if such soil is encountered during grading and construction work.
5. Remediate soils on-site as appropriate to reduce concentrations of VOCs in soil to established cleanup goals.
6. Install groundwater monitoring wells on the Site following redevelopment and conduct quarterly monitoring of on-site monitoring wells for a four-year period, after which they will be made available to other parties, including the RWQCB, for continued monitoring as appropriate.
7. Conduct off-site investigation work to delineate the extent of the VOC plume.
8. Sign and record a deed restriction prohibiting or restricting use of groundwater at the site and restricting use of the site to correspond to the risk-based cleanup goals.

This exhibit presents a brief description of each of these tasks. A work plan will be prepared under separate cover and submitted for review and approval within 30 days of an executed Covenant Not to Sue.

The scope of work will not commence until ASPI has acquired title to all properties subject to the terms of this Exhibit and the Prospective Purchaser Agreement (PPA), and has obtained a Mutual Release and Covenant Not to Sue. ASPI will complete work described above for Tasks 1, 2, 3, 4, and 7 within one year. Task 5 can be initiated within one year, and Task 6 can be completed within six months following completion of site development. Task 8 will be completed within 2 months of ASPI's acquiring title to the final property of the assemblage of properties which are subject to the terms of this Exhibit and the PPA.

**1) Evaluate if There are Existing Unregistered Wells in the Immediate Vicinity of the Site**

LFR, on behalf of ASPI, will contact owners of property in the site vicinity in an attempt to identify any existing wells that are not registered with the County of Alameda Public Works Agency. LFR will send a letter and well survey questionnaire to owners of property located within the city block bounded to the north and south by A Street and B Street, and the east and west by Watkins Street and Montgomery Street. A door to door survey will also be conducted within this area shortly after the letters have been sent. If existing unregistered wells are identified during this survey, ASPI, in consultation with the RWQCB, will determine whether the well(s) should be abandoned, in which case the City of Hayward will request that the respective property owner(s) properly abandon the wells. Any such wells, including a former irrigation well located at 722B Street, will be abandoned by either ASPI or the City of Hayward, presuming approval by the property owner is granted.

**2) Further Source Investigation and Characterization in Three Possible Source Areas**

A focused soil-gas survey will be conducted in three possible source areas to identify the configuration of soils with the highest VOC concentrations (i.e., source soils). Two of these areas have been previously evaluated (Areas 1 and 8). No investigation has been conducted to date in Area 10 due to site access restrictions. However, based on review of historical site use and concentrations of VOCs detected in groundwater during recent investigations, source soils are most likely present just west of Watkins Street in the area between the former dry cleaners (Area 1 on Figure 2) and B Street. Up to 25 soil-gas samples will be collected for the analysis of VOCs using an appropriately spaced grid extending across these potential source areas. Where appropriate, sampling locations will be adjusted to evaluate conditions near subsurface utilities or other potential source areas (e.g., sewer lines). If PCE concentrations exceeding 100 parts per billion (ppb) are detected in soil gas, additional samples will be collected to further assess the lateral and vertical extent of VOCs in soil at those locations.

Assuming that a source area is identified (i.e., PCE concentrations in soil-gas exceed 100 ppb), soil samples will be collected from at least four locations within each source area for analysis of VOCs and physical parameters (e.g., moisture content, total organic carbons, bulk density, and grain-size distribution).

### **3) Develop Risk-Based Cleanup Goals for Soil**

We will work with the RWQCB to develop remedial goals for soil that are protective of human health and the environment. Soil, groundwater, and soil-gas data will be utilized to finalize risk-based cleanup goals for the Site and to evaluate and design appropriate remedial alternatives for on-site soils containing VOCs at concentrations exceeding those cleanup goals. These goals will consider the site-specific potential for chemical migration and exposure. These goals will be developed with input from the RWQCB and will take into account the attenuation of chemical concentrations with distance and over time. Based on existing data for the Site, and assuming that subsequent soil-gas and soil boring data (collected as described in Task 2) are consistent with previously reported results, the RWQCB has confirmed that groundwater remediation will not be required by ASPI (or affiliates thereof). It is anticipated that risk-based cleanup goals will be presented to the RWQCB for review and approval prior to execution of the Covenant Not to Sue.

### **4) Soil Management Plan for Grading and Construction**

The SMP will describe development plans and provide a description of general methods to be employed in site preparation, grading, excavation, trenching, backfilling, and the management of contaminated soils that may be handled during site grading activities. The SMP will include a map showing the location of all areas proposed for grading, excavating, and trenching west of Watkins Street, and estimated soil volumes to be handled in those areas. Procedures for field screening, air monitoring, soil sampling, dust control, soil management, decontamination, and record-keeping practices will also be described.

Based on a geotechnical evaluation of site soils, Treadwell & Rollo recommends that at least 3 feet of soil beneath the building pads be excavated and recompacted. If poorly compacted fill is encountered at the base of the 3-foot excavation, Treadwell & Rollo recommends that additional soil be excavated and recompacted to ensure suitable soil conditions.<sup>1</sup> Because this work is to be conducted in the likely source area for VOCs, preconstruction health and safety meetings will be held between ASPI Construction, ASPI Environmental, and affected contractors. Appropriately licensed contractors will be retained. A qualified environmental consultant will develop and implement the final plan and provide field oversight during initial site grading and development work.

Soil will be field screened during excavation using a photoionization detector (PID) and appropriate field screening techniques. If VOC-affected soil is encountered, soil will be managed in accordance with guidelines set forth in the SMP. Management of contaminated soil, if encountered, will likely include temporary on-site stockpiling for

characterization purposes and possible on-site treatment, as well as alternatives for direct loading and off-site disposal, depending on soil conditions and the extent of affected soil (discussed below). Where appropriate, clean fill will be imported to the Site.

#### **5) Soil Remediation**

Soils on the Site containing concentrations of VOCs that exceed the risk-based cleanup goals adopted for the Site will be remediated to reduce concentrations of VOCs to levels protective of human health and the environment. Contaminated soil encountered during grading activities will be handled in accordance with the SMP discussed above. If soils are found to contain VOCs at concentrations exceeding the established cleanup goals for the site, soil may be remediated on site. Ex situ remediation technologies are dependent on the physical properties of the soil. These properties will be evaluated during the source investigation work described in Task 2 above. If ex situ soil remediation is deemed practical, then remediated soils will be reused on the Site following confirmation testing. If ex situ soil remediation is considered impractical based on the construction schedule, soil conditions, permitting, or other constraints, soils will be transported off site for treatment and disposal.

#### **6) On-Site Groundwater Monitoring Program**

The depth to groundwater beneath the Site is approximately 55 feet below ground surface (bgs). Groundwater will not be encountered during redevelopment activities; therefore, a groundwater management plan is not necessary for this site.

ASPI will install up to four groundwater monitoring wells across the Site following redevelopment. Well placement will be confirmed with the RWQCB prior to installation. Such wells will be monitored quarterly for up to four years to provide data necessary for the RWQCB to evaluate groundwater quality conditions beneath the Site. Water levels will also be measured quarterly to confirm groundwater flow direction beneath the Site. After establishment of these baseline data, the wells would be abandoned or made available for monitoring by others.

#### **7) Off-Site Groundwater Investigation**

Groundwater quality data collected to date indicate that VOC-affected groundwater has migrated off site to the west and south. ASPI understands that the RWQCB is interested in determining the lateral extent of the VOC plume. ASPI will conduct an off-site investigation to assess the downgradient and lateral extents of the plume. It is anticipated that grab groundwater samples will be collected from up to 15 locations utilizing a cone penetration testing (CPT) rig and push-in piezometer technology recognizing that CPT testing has yielded dry wells in the past. The sampling locations will be determined in consultation with RWQCB. ASPI will provide the data to the RWQCB in a written submittal. Following review of results of the off-site investigation, APSI will install two off-site wells at locations determined in consultation with the RWQCB. ASPI will

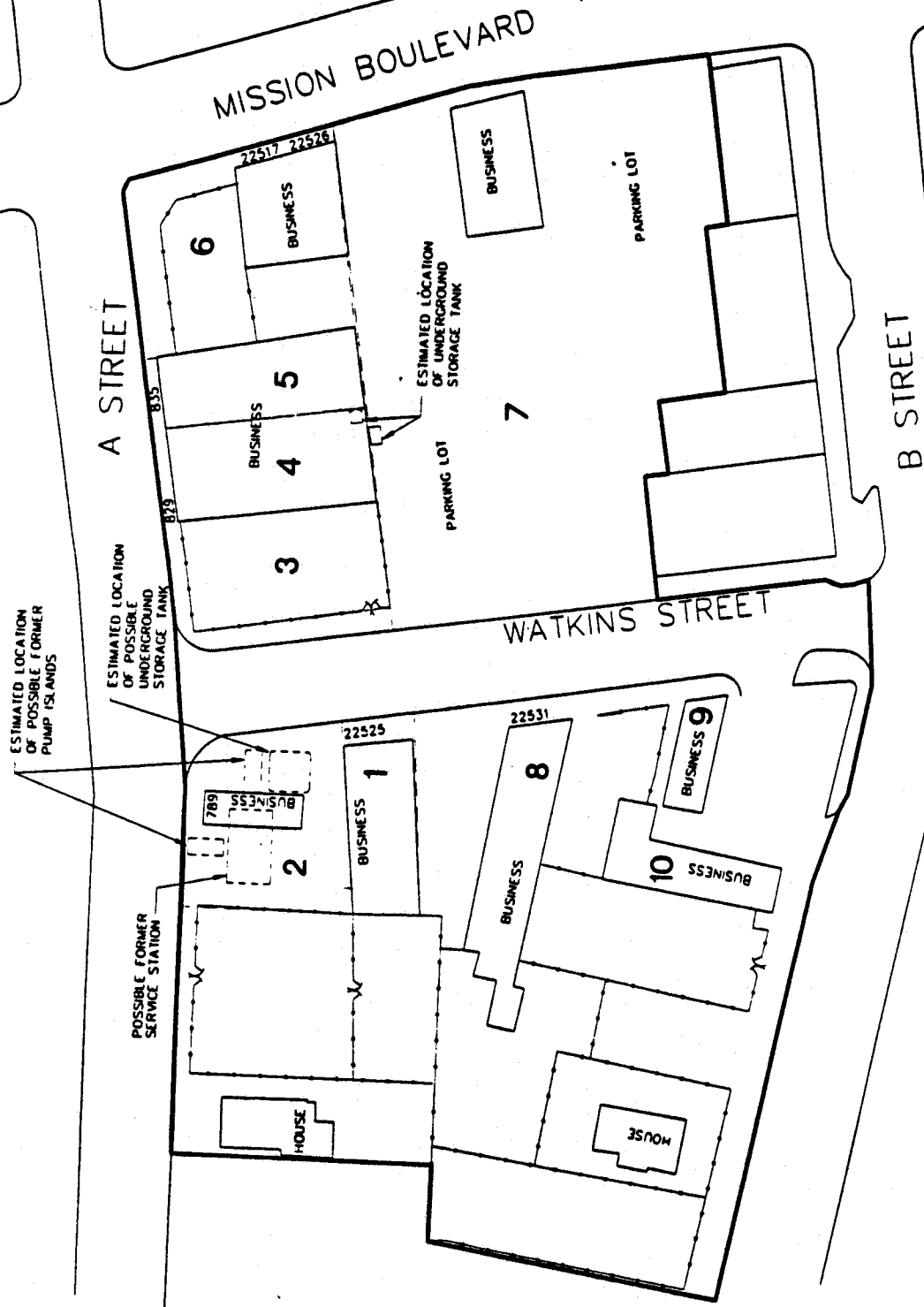
monitor the off-site wells quarterly for up to four years at which time the wells would be abandoned or made available for monitoring by others.

#### **8) Deed Restriction**

In accordance with the Mutual Release and Covenant Not To Sue, ASPI will sign and record a deed restriction, pursuant to Civil Code section 1471, prohibiting or restricting use of groundwater at the Site and restricting use of the Site to correspond to the risk-based cleanup goals. It is anticipated that ASPI will sign and record the deed restriction promptly upon acquiring title to all parcels that will eventually comprise the site. At no time will ASPI access or otherwise use groundwater from beneath any individual parcel. In the unforeseen event that a parcel within the assemblage which comprises the site is subsequently sold by ASPI, a deed restriction restricting the use of groundwater beneath that parcel and, if necessary, the use of that parcel shall be recorded prior to the property transfer.

Attachments: Figure 1 – Working Site Plan  
Figure 2 – Current Site Layout  
Figure 3 – Groundwater Sample Locations  
Table 1 – Summary of Chemical Concentrations in Groundwater

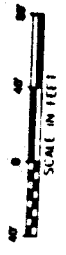
1. Treadwell & Rollo, Inc./Robert Y. Chew Geotechnical. 1997. Final Report, Geotechnical Investigation, Proposed Lucky Store #110-398, Hayward, California. December 4.



EXPLANATION

Fence

Site Boundary

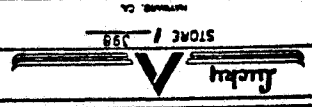


Site Layout

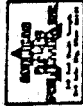


FLYNN  
CHUCK WOOD

DATE: 11/1/88  
BY: [Signature]  
CHECKED: [Signature]  
APPROVED: [Signature]



WORKING SITE PLAN



1" = 100'
1" = 200'
1" = 300'
1" = 400'
1" = 500'
1" = 600'
1" = 700'
1" = 800'
1" = 900'
1" = 1000'

SP-1  
10-1-88

Signal  
All Turns

Mission Boulevard

Signal  
All Turns

One-Way

Proposed City Parking Garage

BUILDING AREA

LUCKY STORE	59,030 SF
GROUND FLOOR	2,952 SF
BUSINESS MEZZANINE	8,000 SF
NEW SHOPS "A"	10,000 SF
NEW SHOPS "C"	413,000 SF
(1) B ST. SHOPS	97,982 SF

PARKING

GROUND LEVEL	224 STALLS
ROOF TOP	143 STALLS
TOTAL	367 STALLS

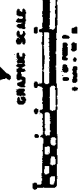


Figure 1

A STREET

Signal

LUCKY #110-378 SAV-ON #06-3780

TO BE BUILT

Two-Way

B STREET

WATKINS

HAYWARD CITY HALL

RIGHT IN/OUT

RIGHT IN/OUT

EXISTING SCHOOL



**Table 1**  
**Summary of Chemical Concentrations in Groundwater**  
**American Stores Properties, Inc., Hayward, California**  
*All concentrations expressed in parts per billion (ppb)*

Sample ID	Date Sampled	Lab	EPA Method	TCE	PCE	cis-1,2-DCE	Trans-1,2-DCE	1,2-DCA	Benzene	Toluene	Ethylbenzene	Total Xylenes	TPHg	TPHd	MTBE
				CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #	CAS #
				79-01-6	127-18-4	156-59-2	156-60-5	107-06-2	71-43-2	108-88-3	100-41-4	1330-20-7			1634-04-4
<b>Samples Collected by LFR</b>															
GGW-1	31-Mar-98	AEN	8010/8020/5015	26	530	<3	<3	<3	1.1	<0.5	<0.5	<2	180	<50	19
GGW-2	30-Mar-98	AEN	8010/8020/5015	93	550	10	17	<5	0.6	<0.5	<0.5	<2	<50	<50	<5
GGW-3	31-Mar-98	AEN	8010/8020/5015	18	6.5	1.6	2.4	4	1.4	<0.5	<0.5	<2	80	<50	28
GGW-4	30-Mar-98	AEN	8010/8020/5015	250	170	77	140	7	8.2	3.7	1.2	6	290	<50	<100
GGW-7	30-Mar-98	AEN	8010/8020/5015	<0.5	1.3	<0.5	<0.5	<0.5	0.5	<0.5	<0.5	<2	<50	<50	<5
GGW-8	31-Mar-98	AEN	8010/8020/5015	<0.5	1.9	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<2	<50	<50	<5
GGW-9	31-Mar-98	AEN	8010/8020/5015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<2	<50	<50	<5
GGW-10	30-Mar-98	AEN	8010/8020/5015	0.9	10	<0.5	<0.5	1.2	1.1	<0.5	<0.5	<2	<50	<50	<5
GGW-11	30-Mar-98	AEN	8010/8020/5015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<2	<50	<50	<5
GGW-14	19-Aug-98	C&T	8260	<42	820	<42	<42	<42	<42	<42	<42	<42	<50	<50	<5
GGW-15	20-Aug-98	C&T	8260	<36	1200	<36	<36	<36	<36	<36	<36	<36	520 (1)	NA	<170
GGW-16	20-Aug-98	C&T	8260	<5.0	<5.0	<5.0	<5.0	3.0 (2)	<5.0	<5.0	<5.0	<5.0	NA	NA	<140
GGW-17	20-Aug-98	C&T	8260	<5.0	21	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<50	NA	<20
GGW-18	20-Aug-98	C&T	8260	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	NA	NA	<20
GGW-19	20-Aug-98	C&T	8260	<5.0	120	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	NA	NA	<20
GGW-20	19-Aug-98	C&T	8260	7.3 (2)	230	<10	<10	<10	<10	<10	<10	<10	NA	NA	<20
GGW-21	19-Aug-98	C&T	8260	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	NA	NA	<40
GGW-22	20-Aug-98	C&T	8260	8	66	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	NA	NA	<20
GGW-23	29-Oct-98	C&T	8260	16	280	<13	<13	<13	<13	<13	<13	<13	NA	NA	<20
GGW-24	28-Oct-98	C&T	8260	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	NA	NA	<20
GGW-25	28-Oct-98	C&T	8260	<8.3	260	<8.3	<8.3	<8.3	<8.3	<8.3	<8.3	<8.3	NA	NA	NA
AGWell	29-Mar-99	(8)	8260	0.8	<0.5	<0.5	<0.5	<0.5	NA	NA	NA	NA	NA	NA	NA
AGWell	29-Mar-99	Dup (8)	8260	0.9	<0.5	<0.5	<0.5	<0.5	NA	NA	NA	NA	NA	NA	NA
B-ST-122	17-Apr-99	C&T	8260	<0.5	<0.5	<0.5	<0.5	<0.5	NA	NA	NA	NA	NA	NA	NA
<b>Samples Collected by Wahler Associates</b>															
MW-1	30-Aug-91	(3,7)	8240/8015	<2	<2	<2	<2	<2	<2	<2	<2	<2	<50	<50	NA
MW-3	30-Aug-91	(3,7)	8240/8015	<2	<2	<2	<2	<2	<2	<2	<2	<2	<50	<50	NA
MC-1	05-Sep-91	(4,7)	8240/8015	<2	<2	<2	<2	<2	270	280	47	240	1400	170	NA
MC-2	05-Sep-91	(3,7)	8240/8015	<2	<2	<2	<2	<2	<2	<2	<2	<2	<50	<50	NA
MC-2C	05-Sep-91	(3,7)	8240/8015	<2	<2	<2	<2	<2	<2	<2	<2	<2	<50	<50	NA
MC-5	05-Sep-91	(7)	8240/8015	14	14	<2	<2	<2	<2	<2	<2	<2	<50	<50	NA
SB-1	26-Sep-91	(3)	8010/8020/8015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<50	<50	NA
SB-2	25-Sep-91	(3)	8010/8020/8015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<50	<50	NA
SB-3	27-Sep-91	(5)	8010/8020/8015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<50	<50	NA
SB-4	27-Sep-91	(6)	8010/8020/8015	13	12	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<50	<50	NA
SB-5	26-Sep-91	(3)	8010/8020/8015	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<50	<50	NA

Data updated by TGL Proofed by LPL QA/QC by SKS.

Notes:

TCE = Trichloroethene

PCE = Tetrachloroethene

cis-1,2-DCE = cis-1,2-Dichloroethene

AEN = American Environmental Network

C&T = Curtis & Tompkins

NA = Not Analyzed

**EXHIBIT 2**

**TRANSFER DOCUMENT**

California Regional Water Quality Control Board  
San Francisco Bay Region

**Exhibit 2 to Resolution No. 99-054**  
**Written Instrument of Release and Transfer Document**

American Stores Properties, Inc., (hereinafter "Released Party"), by signing below verifies and warrants as follows:

Released Party has read the Mutual Release and Covenant Not to Sue ("Mutual Release") document, for the proposed Lucky Store No. 110-398 site in the City of Hayward, County of Alameda, California as identified in Exhibit 3 to Resolution No. 99-054.

Released Party understands and agrees that the Mutual Release contains a release by the Regional Water Quality Control Board ("Regional Board") and a covenant not to bring or support any action or order against subsequent purchasers, tenants, lenders, and occupants of all or a portion of the Property (as defined in the Mutual Release), including their directors, officers, employees, partners, affiliates, members, agents, successors, and assigns, related to the Known Conditions (as defined in the Mutual Release), including contamination at, under, or originating from the proposed Lucky Store No. 110-398 (as defined in the Mutual Release).

Released Party understands and agrees that it may enjoy the benefits of the Mutual Release only if it releases and covenants not to sue the Regional Board as set forth in the Mutual Release, and that by executing this Release, Released Party releases and covenants not to sue the Regional Board in accordance with the terms of the Mutual Release.

Released Party understands and agrees that its right to rely on the benefits of the Mutual Release is subject to and conditioned on its own, but only its own, compliance with its obligations under the terms of the Mutual Release.

This Release and Transfer Document shall be effective upon execution by the Released Party. As soon as practical after execution, Released Party agrees to mail a copy of the executed Release to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region (address as of June, 1999: The Harris Office Building, 1515 Clay Street, Suite 1400, Oakland, CA 94612).

\_\_\_\_\_  
Authorized Signature (Released Party)

\_\_\_\_\_  
Date

Name/Title: \_\_\_\_\_

Company Name

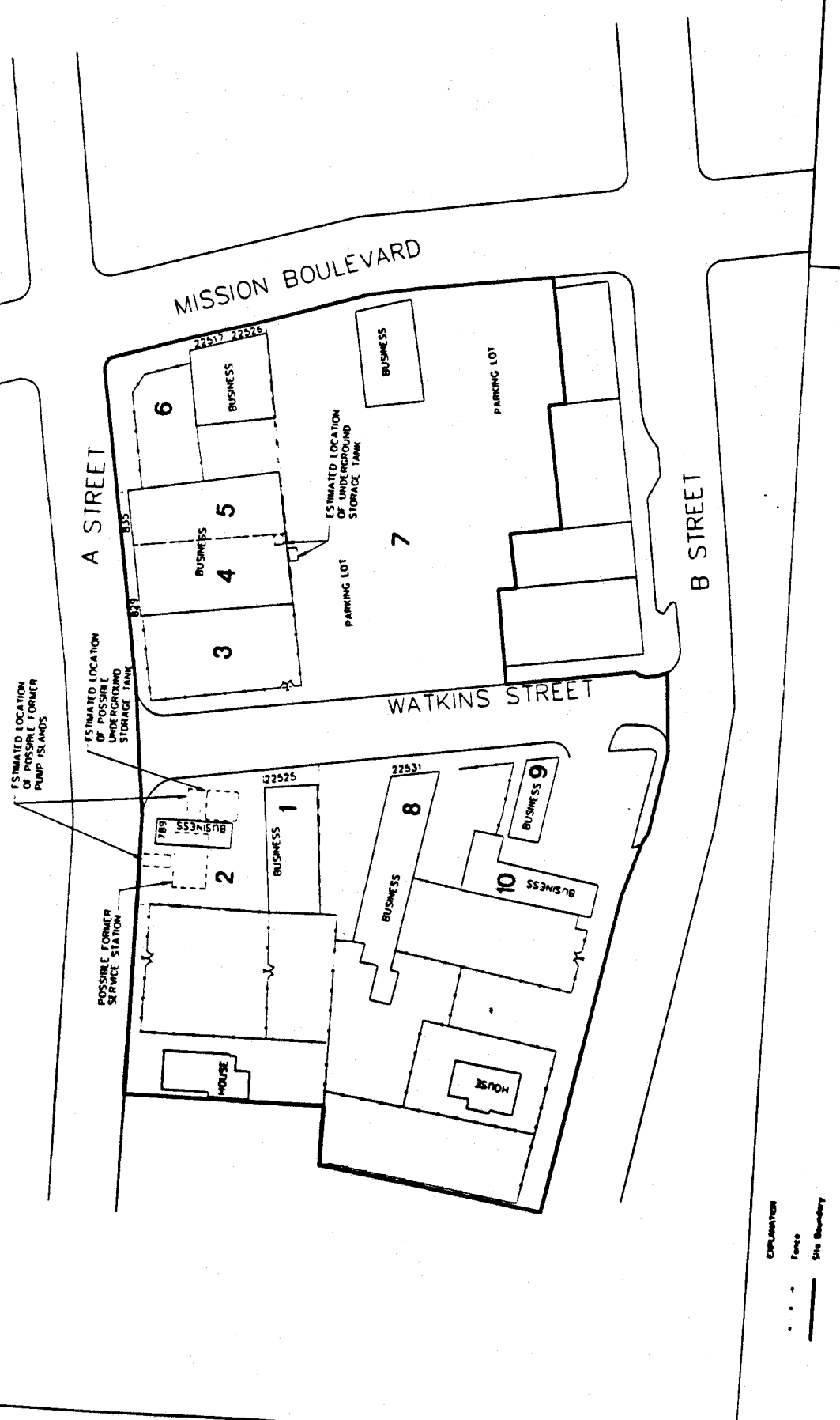
And Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 3**

**- MAP OF PROPOSED PARCEL**



Site Layout



Figure 1